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8

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation
Against:

Case No. 2001-269

OAH No. L2006030562

13 **MICHELLE MARIE TRUDEAU, AKA**
14 **MICHELLE PAIVA, AKA**
MICHELLE MARIE PAIVA, AKA
15 **MICHELLE MARIE GARDNER PAIVA,**
AKA MICHELLE MARIE GARDNER, AKA
16 **MICHELLE BUGG, AND**
MICHELLE MARIE BUGG

**PETITION TO REVOKE
PROBATION**

17 5613 Gateway Drive
Salida, CA 95368

18 Registered Nurse License No. 456585
19

Respondent.
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21 Complainant alleges:

22 **PARTIES**

23 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Petition to
24 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
25 Registered Nursing ("Board"), Department of Consumer Affairs.

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2. On or about August 31, 1990, the Board issued Registered Nurse License Number 456585 to Michelle Marie Trudeau, also known as Michelle Paiva, Michelle Marie Paiva, Michelle Marie Gardner Paiva, Michelle Marie Gardner, Michelle Bugg, and Michelle Marie Bugg ("Respondent"). The registered nurse license will expire on May 31, 2008.

Prior Discipline

3. Effective February 11, 1999, pursuant to the Decision After Remand from Superior Court in Accusation No. 97-88, in *In the Matter of the Accusation Against Michelle Paiva, aka Michelle Marie Gardner, aka Michelle Marie Gardner Paiva*, the Board revoked Respondent's Registered Nurse License No. 456585. However, the revocation was stayed, and respondent was placed on three (3) years' probation.

4. Effective November 22, 2001, pursuant to the Default Decision and Order in Accusation and Petition to Revoke Probation No. 2001-269, the Board in *In the Matter of the Accusation and Petition to Revoke Probation Against Michelle Paiva, aka Michelle Marie Gardner Paiva, aka Michelle Marie Gardner, aka Michelle Bugg, aka Michelle Marie Bugg*, Case No. 2005-163, revoked Respondent's probation, imposing the order of revocation that had been stayed in Board Case Number 97-88, and revoked Petitioner's license.

5. Effective October 5, 2004, the Board issued to Respondent Citation No. 2004-447, based on findings that, in September 2003, Respondent had provided a falsified renewal application to an employer as proof of license renewal, and that she had engaged in the unlicensed practice of nursing. A \$2,500 fine was assessed, which Respondent paid.

6. On or about June 24, 2006, the Board granted Respondent's petition for reinstatement of her license. A license was issued, and immediately revoked; the revocation was stayed, and Respondent was placed on five (5) years' probation. A copy of the Decision and Order in *In the Matter of the Petition for Reinstatement: Michelle Maria Paiva*, OAH L2006030562, is attached as **Exhibit A** and is incorporated by reference.

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1 **Employment Approval and Reporting Requirements**

2 Respondent shall obtain prior approval from the Board before
3 commencing or continuing any employment, paid or voluntary, as a registered
4 nurse. Respondent shall cause to be submitted to the Board all performance
5 evaluations and other employment related reports as a registered nurse upon
6 request of the Board.

7 Respondent shall provide a copy of this Decision to her employer and
8 immediate supervisors prior to commencement of any nursing or other health care
9 related employment.

10 In addition to the above, respondent shall notify the Board in writing
11 within seventy-two (72) hours after he or she obtains any nursing or other health
12 care related employment. Respondent shall notify the Board in writing within
13 seventy-two (72) hours after he or she is terminated or separated, regardless of
14 cause, from any nursing, or other health care related employment with a full
15 explanation of the circumstances surrounding the termination or separation.

16 12. Respondent's probation is subject to revocation because she failed to
17 comply with Probation Condition 7, referenced above, when she started work on or about
18 January 29, 2007, as a registered nurse at Salida Surgery Center in Salida, California, as follows:

19 a. Respondent failed to obtain approval from the Board prior to starting work
20 on or about January 29, 2007.

21 b. Respondent failed to notify the Board in writing within seventy-two (72)
22 hours after obtaining such work.

23 **SECOND CAUSE TO REVOKE PROBATION**

24 (Failure to Submit to Tests and Samples)

25 13. At all times after the effective date of Respondent's probation, Condition
26 17 stated:

27 Respondent, at his/her expense, shall participate in a random, biological
28 fluid testing or a drug screening program which the Board approves. The length
29 of time and frequency will be subject to approval by the Board. The respondent is
30 responsible for keeping the Board informed of respondent's current telephone
31 number at all times. Respondent shall also ensure that messages may be left at the
32 telephone number when he/she is not available and ensure that reports are
33 submitted directly by the testing agency to the Board, as directed. Any confirmed
34 positive finding shall be reported immediately to the Board by the program and
35 respondent shall be considered in violation of probation.

36 In addition, respondent, at any time during the period of probation, shall
37 fully cooperate with the Board or any of its representatives, and shall, when
38 requested, submit to such tests and samples as the Board or its representatives

1 may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or
2 other controlled substances.

3 If respondent has a positive drug screen for any substance not legally
4 authorized and not reported to the coordinating physician, nurse practitioner, or
5 physician assistant, and the Board files a petition to revoke probation or an
6 accusation, the Board may suspend respondent from practice pending the final
7 decision on the petition to revoke probation or the accusation. This period of
8 suspension will not apply to the reduction of this probationary time period.

9 If respondent fails to participate in a random, biological fluid testing or
10 drug screening program within the specified time frame, respondent shall
11 immediately cease practice and shall not resume practice until notified by the
12 Board. After taking into account documented evidence of mitigation, if the Board
13 files a petition to revoke probation or an accusation, the Board may suspend
14 respondent from practice pending the final decision on the petition to revoke
15 probation or the accusation. This period of suspension will not apply to the
16 reduction of this probationary period.

17 14. Respondent's probation is subject to revocation because she failed to
18 comply with Probation Condition 17, referenced above. The facts and circumstances regarding
19 this violation are as follows:

20 a. Respondent failed to appear for random drug testing as required on
21 June 15, 2007, July 5, 2007, and July 6, 2007.

22 b. Respondent failed to call in for random drug testing for the period May 23,
23 2007, to on or about December 13, 2007.

24 c. Respondent failed to pay for random drug testing on November 8, 2006,
25 December 6, 2006, and December 20, 2006.

26 **THIRD CAUSE TO REVOKE PROBATION**

27 (Failure to Abstain from Alcohol Use; Failure to Provide Prescribing Professional's Report)

28 15. At all times after the effective date of Respondent's probation,
Condition 16 stated, in pertinent part:

Abstain From Use of Psychotropic (Mood-Altering) Drugs

Petitioner shall completely abstain from the possession, injection or
consumption by any route of all psychotropic (mood altering) drugs, including
alcohol, except where the same are ordered by a health care professional legally
authorized to do so as part of documented medical treatment. Respondent shall
have sent to the Board, in writing and within fourteen (14) days, by the
prescribing health professional, a report identifying the medication, dosage, the
date the medication was prescribed, the respondent's prognosis, the date the

1 medication will no longer be required, and the effect on the recovery plan, if
2 appropriate.

3 16. Respondent's probation is subject to revocation because she failed to
4 comply with Probation Condition 16, referenced above. The facts and circumstances regarding
5 this violation are as follows:

6 a. Respondent tested positive for alcohol in a random drug screening on
7 May 11, 2007.

8 b. Respondent tested positive for Tramadol in random drug screenings on
9 October 31, 2006; February 13, 2007; February 26, 2007; March 6, 2007; April 10, 2007;
10 May 11, 2007; and May 14, 2007; however, Respondent failed to submit to the Board a written
11 report for a Tramadol prescription from the prescribing health professional.

12 **FOURTH CAUSE TO REVOKE PROBATION**

13 (Failure to Comply with Terms of Probation Program)

14 17. At all times after the effective date of Respondent's probation, Condition 2
15 stated, in pertinent part:

16 **Comply with the Board's Probation Program.**

17 Respondent shall fully comply with the conditions of the Probation
18 Program established by the Board and cooperate with representatives of the Board
19 in its monitoring and investigation of the respondent's compliance with the
Board's Probation Program.

20 18. Respondent's probation is subject to revocation because she failed to
21 comply with Probation Condition 2, in that she failed the Board's Probation Program, by failing
22 to comply with Probation Condition Nos. 7, 16 and 17, as more fully set forth in paragraph 12,
23 subparagraphs a and b; paragraph 14, subparagraphs a through c; and paragraph 16,
24 subparagraphs a and b, above.

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1 PRAYER

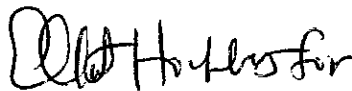
2 **WHEREFORE**, Complainant requests that a hearing be held on the matters
3 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 19. Revoking the probation that was granted by the Board of Registered
5 Nursing in OAH No. L2006030562, and imposing the disciplinary order that was stayed thereby
6 revoking Registered Nurse License No. 456585, issued to Michelle Marie Trudeau, also known
7 as Michelle Paiva, Michelle Marie Paiva, Michelle Marie Gardner Paiva, Michelle Marie
8 Gardner, Michelle Bugg, and Michelle Marie Bugg;

9 20. Revoking or suspending Registered Nurse License No. 456585, issued to
10 Michelle Marie Trudeau, also known as Michelle Paiva, Michelle Marie Paiva, Michelle Marie
11 Gardner Paiva, Michelle Marie Gardner, Michelle Bugg, and Michelle Marie Bugg; and,

12 21. Taking such other and further action as deemed necessary and proper.

13 DATED: 1/2/08

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16 RUTH ANN TERRY, M.P.H., R.N.
17 Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Complainant

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Exhibit A

Decision and Order

Office of Administrative Hearing Case No. L2006030562

Exhibit A

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement:

MICHELLE MARIE PAIVA

Registered Nurse License No. 456585

Petitioner.

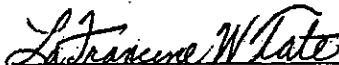
OAH No. L2006030562

DECISION

The attached Decision of the Board of Registered Nursing is hereby adopted by the Board as its Decision in the above-entitled matter.

This Decision shall become effective on June 24, 2006.

IT IS SO ORDERED this 25th day of May 2006.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement of:

MICHELLE MARIE PAIVA,

Petitioner.

OAH No. L2006030562

DECISION

This matter was heard by a quorum of the Board of Registered Nursing (Board) on April 6, 2006, in Torrance, California. The Board members who participated in the hearing and decision were LaFrancine Tate, Public Member, President; Grace Corse, RN, Vice President; Carmen Morales-Board, MSN, NP, RN; Elizabeth O. Dietz, Ed.D., RN, CS-NP; Mary C. Hayashi, Public Member; Orlando H. Pile, M.D.; and Susanne Phillips, MSN, RN, APRN-BC, FNP. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided.

Petitioner was present and represented herself.

Gloria Barrios, Deputy Attorney General, appeared on behalf of the Attorney General of the State of California.

The petition and other relevant documents were presented. Petitioner and the Deputy Attorney General made oral presentations to the Board. Petitioner responded to questions of Board members and the Deputy Attorney General. The record was closed, the Board met in executive session, and the matter was decided on the day of the hearing.

FACTUAL FINDINGS

1. On August 31, 1990, the Board issued Registered Nursing License No. 456585 to Petitioner.
2. On February 11, 1999, in Board case number 97-88, Petitioner's license was revoked, but the revocation was stayed and Petitioner was placed on three years probation under various terms and conditions. That discipline was based on findings that Petitioner had engaged in unprofessional conduct in 1992, when she made grossly incorrect, inaccurate or unintelligible entries in hospital and patient records. Petitioner was not ordered to pay costs to the Board. Petitioner's license subsequently expired on May 31, 2000.

—3A. The Board, by a Default Decision and Order, effective November 22, 2001, in resolution of Board case no. 2001-269, revoked Petitioner's probation, imposed the order of revocation that had been stayed in Board case number 97-88, and revoked Petitioner's license. Although there was a finding that, as of September 4, 2001, the Board had incurred costs of \$11,281.50 investigating and enforcing the matter, Petitioner was not ordered to pay any costs to the Board.

3B. The revocation of Petitioner's license was based on findings that, in 1999, she had engaged in the following misconduct: she unlawfully possessed controlled substances without a prescription and self-administered them in a manner injurious to herself; she had been convicted of a substantially related crime involving controlled substances; and, by that misconduct, she also violated the terms of her probation in Board case number 97-88.

4. After her license had been revoked, the Board issued to Petitioner a citation and fine of \$2,500.00, effective October 5, 2004, based on findings that, in September 2003, she had provided a falsified renewal application to an employer as proof of license renewal, and that she had engaged in the unlicensed practice of nursing. Petitioner paid the fine.

5. The petition was filed with the Board on January 5, 2006.

6. The misconduct that led to revocation of Petitioner's license was the result of Petitioner's addiction to prescription drugs. After a few unsuccessful attempts of sobriety, Petitioner finally bottomed out by April 2003, when she realized the extent of her addiction. She has been sober since April 21, 2003. She went through a detoxification program from April 2003 through July 2003. She thereafter has faithfully attended Narcotics Anonymous meetings several times a week, sometimes twice a day. Petitioner adheres to the 12-step concept, remains in constant contact with her sponsor, and is herself a sponsor of other recovering addicts. Petitioner also volunteers to do administrative tasks for her local Narcotics Anonymous program. She has recently married another recovering addict, and many of her friends are also recovering addicts, so she has a support system in place.

7. Petitioner successfully completed the probation from the conviction that was the subject of her revocation proceeding, as well as probations from other convictions that were not the subject of the revocation proceeding. Those other convictions involved bad checks that Petitioner had written to fund her addiction. She has made full restitution to all the victims of her crimes.

8. After her license was revoked, Petitioner worked for Status Medical as a case manager of Workers' Compensation claim files. That job led to the above-described citation and fine. In applying for the job, Petitioner indicated that she had an active license, which was incorrect. However, at that time, she had moved without advising the Board of her new address, so she had not received the Accusation or Default Decision in the proceeding to revoke her probation with the Board. By that time, she had sent a renewal request to the Board and gave a copy of that request to her employer. She was also confused over whether her duties required a nursing license, in that her main responsibility was facilitating

communication between injured workers, their employers and the involved insurance carriers. However, when Petitioner appeared before the Board during the hearing on the citation, she candidly admitted that "in my heart of hearts, I knew that I probably needed a license to do what I was doing." Board staff was then impressed with her candor during the citation hearing, as well as the fact that she actually admitted to misconduct that was not alleged in the initial citation.

9. Petitioner has received psychotherapy treatment from Joseph L. Hernandez, Ph.D., since May 2004. A letter from Dr. Hernandez, dated December 29, 2005, was presented. In that letter, Dr. Hernandez outlines his therapy, including substance abuse issues, and opines that "I foresee no problems with Ms. Paiva being reinstated"

10. Petitioner also presented various favorable letters of reference from those who attend with her meetings at Narcotics Anonymous, her mother, and her husband. Each attest to Petitioner's sobriety, positive attitude and good character.

11. By March 2004, Petitioner had completed 30 hours of continuing professional education in nursing.

12. Petitioner expressed to the Board during the hearing sincere remorse for her misconduct. She was candid in her description of her drug addiction and recovery. She now accepts all responsibility for her misconduct and is dedicated to making amends to all of those she hurt in the past. She demonstrated a healthy attitude about her situation. The Board is impressed that Petitioner now understands her addiction and how to effectively battle it.

LEGAL CONCLUSIONS

1. Petitioner has the burden of establishing by clear and convincing evidence that she is entitled to the requested relief. (Bus. & Prof. Code, § 2760.1, subd. (b).)

2. Petitioner clearly and convincingly established that cause exists to reinstate her license, pursuant to Business and Professions Code section 2760.1, and California Code of Regulations, title 16, section 1445. Petitioner demonstrated to the Board a sufficient period of sobriety and that she is in control of her drug addiction. There was some evidence of misconduct subsequent to her discipline, in that she was cited and fined by the Board. However, the misconduct was not serious and mitigating circumstances existed. Petitioner was candid with the Board during the citation hearing and paid the resulting fine. Petitioner also demonstrated during this hearing candor, remorse for her past misconduct and a positive attitude about her current situation. She established sufficient rehabilitation from her convictions and license revocation. Under these circumstances, the Board is satisfied that reinstating Petitioner's license will not jeopardize public protection. (Factual Findings 1-12.)

3. Government Code section 11522, and Business and Professions Code section 2760.1, subdivision (e), provide the Board with the authority to reinstate a previously revoked license upon appropriate "terms and conditions." In this case, Petitioner's past misconduct was the result of a drug addiction and she has been sober for only three years. She had some relapses prior to her current sobriety. She violated a prior Board probation. She has been the subject of three separate Board disciplinary actions. Thus, a five-year probation is warranted, with terms and conditions, including that she comply with the Board's addiction recovery program. (Factual Findings 1-12.)

ORDER

The petition of Michelle Marie Paiva (hereinafter Respondent) for reinstatement of licensure is hereby GRANTED. A license shall be issued to Respondent. Said license shall immediately be REVOKED, the order of revocation STAYED, and Respondent placed on PROBATION for a period of FIVE (5) YEARS under the following terms and conditions:

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program.

Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

(3) REPORT IN PERSON

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION

Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S)

Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(11) COST RECOVERY

Respondent was not ordered to pay the Board costs incurred from prior disciplinary actions, so none are ordered herein.

(12) VIOLATION OF PROBATION

If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER

During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

1. Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

2. One year for a license surrendered for a mental or physical illness.

(14) PHYSICAL EXAMINATION

Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE

Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(17) SUBMIT TO TESTS AND SAMPLES

Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(18) MENTAL HEALTH EXAMINATION

The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if


significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(19) THERAPY OR COUNSELING PROGRAM

Respondent, at his/her expense, shall participate in an on-going counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

IT IS SO ORDERED. This Decision shall be effective June 24, 2006.

Dated: 5/25/06



LaFrancine Tate, President,
Board of Registered Nursing
Department of Consumer Affairs
State of California

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and
Petition to Revoke Probation Against:

MICHELLE PAIVA
aka MICHELLE MARIE GARDNER PAIVA,
aka MICHELLE MARIE GARDNER,
aka MICHELLE BUGG,
aka MICHELLE MARIE BUGG
1149 Stonecrest Drive
Antioch, CA 94509

Registered Nurse License Number 456585

Respondent.

Case No. 2001-269

**DEFAULT DECISION
AND ORDER**

Registered nurse license number 456585, heretofore issued to Respondent
Michelle Marie Paiva, is hereby revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may
serve a written motion requesting that the Decision be vacated and stating the grounds relied on
within seven (7) days after service of the Decision on Respondent. The agency in its discretion
may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
statute.

This Decision shall become effective on November 22, 2001.

It is so ORDERED October 23, 2001

Sandra S. Erickson

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 W. LLOYD PARIS, State Bar No. 124755
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, California 94102
Telephone: (415) 703-5553
5 Facsimile: (415) 703-5480
6 Attorneys for Complainant

7
8
9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation and
14 Petition to Revoke Probation Against:

Case No. 2001-269

**DEFAULT DECISION
AND ORDER**

[Government Code § 11520]

15 MICHELLE PAIVA
aka MICHELLE MARIE GARDNER PAIVA,
16 aka MICHELLE MARIE GARDNER,
aka MICHELLE BUGG,
17 aka MICHELLE MARIE BUGG
1149 Stonecrest Drive
Antioch, CA 94509

18 Registered Nurse License No. 456585

Respondent.

19
20 **FINDINGS OF FACT**

21 1. On or about May 10, 2001, Complainant Ruth Ann Terry, M.P.H., R.N., in
22 her official capacity as Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs, State of California, filed Accusation and Petition to Revoke Probation No.
24 2001-269 against Michelle Marie Paiva ("Respondent") before the Board of Registered Nursing
25 ("Board").

26 2. On or about August 31, 1990, the Board of Registered Nursing issued
27 Registered Nurse License Number 456585 to Respondent. On February 11, 1999, in Board case
28 number 97-88, the license was revoked, but the revocation was stayed, and respondent was

1 placed on three years probation. The license expired on May 31, 2000, and it has not been
2 renewed.

3 3. On or about May 22, 2001, Fe Domingo, an employee of the Department
4 of Justice, served by Certified Mail a copy of the Accusation and Petition to Revoke Probation
5 No. 2001-269, Statement to Respondent, Notice of Defense, Request for Discovery, and
6 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
7 with the Board, which was and is 1149 Stonecrest Drive, Antioch, CA 94509. A copy of the
8 Accusation and Petition to Revoke Probation, the associated supplemental documents and
9 Declaration of Service are attached hereto as "Exhibit A," and they are incorporated as if fully set
10 forth herein.

11 4. The above-described service of the Accusation and Petition to Revoke
12 Probation was effective as a matter of law pursuant to the provisions of Government Code
13 section 11505, subdivision (c).

14 5. On or about July 10, 2001, the aforementioned documents were returned
15 by the U.S. Postal Service marked "Unclaimed." A copy of the postal returned documents are
16 attached hereto as "Exhibit B," and they are incorporated as if fully set forth herein.

17 6. Government Code section 11506 states, in pertinent part:

18 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
19 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
20 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
21 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

22 7. Respondent failed to file a Notice of Defense within 15 days after service
23 upon her of the Accusation and Petition to Revoke Probation, and therefore waived her right to a
24 hearing on the merits of Accusation and Petition to Revoke Probation No. 2001-269.

25 8. California Government Code section 11520 states, in pertinent part:

26 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
27 agency may take action based upon the respondent's express admissions or upon other evidence
28 and affidavits may be used as evidence without any notice to respondent."

1 9. Pursuant to its authority under Government Code section 11520, the Board
2 finds Respondent is in default. The Board will take action without further hearing and, based on
3 Respondent's express admissions by way of default and the evidence before it, contained in
4 Exhibits A and B, finds that the allegations, and each of them, in Accusation and Petition to
5 Revoke Probation No. 2001-269 are true.

6 10. The total costs for investigation and enforcement are \$11,281.50 as of
7 September 4, 2001.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Michelle Marie Paiva
10 has subjected her registered nurse license number 456585 to discipline.

11 2. A copy of the Accusation and Petition to Revoke Probation and the related
12 documents and Declaration of Service are attached hereto.

13 3. The agency has jurisdiction to adjudicate this case by default.

14 4. The Board is authorized to revoke Respondent's registered nurse license
15 based upon the following violations alleged in the Accusation and Petition to Revoke Probation:

- 16 a. Business and Professions Code section 2762(a) for obtaining and/or
17 possessing controlled substances without a prescription from a physician;
18 b. Business and Professions Code section 2762(b) for using controlled
19 substances in a manner injurious to herself or others;
20 c. Business and Professions Code sections 490, 2761(f) and 2762(c) for
21 having been convicted of a crime substantially related to the profession of
22 registered nursing and a crime involving controlled substances; and
23 d. Violating numerous provisions of probation in Board case number 97-88.

24
25 Attachments:

26 Exhibit A: Accusation and Petition to Revoke Probation, Case No.2001-269, Associated
 Supplemental Documents and Declaration of Service

27 Exhibit B: Postal Return Documents

Exhibit A

**Accusation and Petition to Revoke Probation, Case No. 2001-269,
Related Documents and Declaration of Service**

Exhibit B
Postal Return Documents

1 BILL LOCKYER, Attorney General
of the State of California
2 W. LLOYD PARIS, State Bar No. 124755
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, California 94102
Telephone: (415) 703-5553
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2001-269

12 MICHELLE PAIVA
aka MICHELLE MARIE GARDNER PAIVA,
13 aka MICHELLE MARIE GARDNER,
aka MICHELLE BUGG,
14 aka MICHELLE MARIE BUGG
1149 Stonecrest Drive
15 Antioch, CA 94509

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

16 Registered Nurse License No. 456585

17 Respondent.

18
19 Complainant alleges:

- 20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.
- 23 2. On or about August 31, 1990, the Board of Registered Nursing issued
24 Registered Nurse License Number 456585 to MICHELLE PAIVA ("Respondent"). On February
25 11, 1999, in Board Case No. 97-88, the license was revoked, but the revocation was stayed, and
26 respondent was placed on three years probation. The Registered Nurse License expired on May
27 31, 2000, and has not been renewed.

28 //

ACCUSATION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), under the authority of the following sections of the Business and Professions Code ("Code").

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous

1 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
2 dangerous or injurious to himself or herself, any other person, or the public or to the
3 extent that such use impairs his or her ability to conduct with safety to the public the
4 practice authorized by his or her license.

5 "(c) Be convicted of a criminal offense involving the prescription, consumption,
6 or self-administration of any of the substances described in subdivisions (a) and (b) of
7 this section, or the possession of, or falsification of a record pertaining to, the substances
8 described in subdivision (a) of this section, in which event the record of the conviction is
9 conclusive evidence thereof.

10 7. Section 490 of the Code states:

11 "A board may suspend or revoke a license on the ground that the licensee has
12 been convicted of a crime, if the crime is substantially related to the qualifications,
13 functions, or duties of the business or profession for which the license was issued. A
14 conviction within the meaning of this section means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. Any action which a board is permitted to
16 take following the establishment of a conviction may be taken when the time for appeal
17 has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
18 granting probation is made suspending the imposition of sentence, irrespective of a
19 subsequent order under the provisions of Section 1203.4 of the Penal Code."

20 8. Section 118, subdivision (b), of the Code provides that the suspension,
21 expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to
22 proceed with a disciplinary action during the period within which the license may be renewed,
23 restored, reissued or reinstated.

24 9. Section 2764 of the Code states, in pertinent part, that the expiration of a
25 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
26 against the licensee or to render a decision imposing discipline on the license.

27 10. Section 2811(b) of the Code provides, in pertinent part, that the Board
28 may renew an expired license at any time within eight years after the expiration.

1 11. Code section 125.3 provides for recovery by the Board of certain costs of
2 investigation and enforcement in disciplinary actions where a licensee is found to have
3 committed a violation or violations of the licensing act. A certified copy of the actual costs
4 signed by the designated representative of the Board, shall constitute prima facie evidence of
5 reasonable costs of investigation and prosecution of the case up to the date of the hearing.

6 CAUSES FOR DISCIPLINE

7 12. Respondent is subject to disciplinary action under Code section 2762(a)
8 for having obtained or possessed, in violation of the law, or prescribed, furnished or administered
9 to herself controlled substances without a prescription from a physician. The circumstances are
10 as follows:

11 A. On May 20, 1999 respondent falsely represented herself as "Sheri"
12 from Dr. Judith Scott's office when she telephoned in a prescription for 50 generic Vicodin¹ with
13 one refill to Longs Drug Store in San Ramon. While pretending to be "Sheri", respondent
14 indicated that the prescription was for herself, Michelle Paiva. A few days later respondent
15 picked up the prescription identifying herself as Michelle Paiva.

16 B. On May 24, 1999 respondent again falsely represented herself as
17 "Sheri" from Dr. Judith Scott's office when she telephoned to authorize two more refills for
18 Vicodin to Longs Drug Store in San Ramon. Again, respondent indicated that the prescription
19 was for Michelle Paiva. Respondent went to pick up the prescription, but she left the Longs
20 Drug Store before it was filled and before the authorities arrived.

21 C. Additionally, respondent also forged or falsified and obtained the
22 following generic Vicodin prescriptions from the Longs Drug Store in San Ramon:

23
24
25
26 1. Vicodin¹, a brand of hydrocodone with acetaminophen, is a Schedule III controlled
27 substance as defined in Health and Safety Code section 11056(e)(4) and a dangerous drug as
28 defined by Code section 4022; and is a narcotic analgesic.

	<u>Date</u>	<u>Quantity/Strength</u>	<u>Prescriber</u>
(1)	5/2/99	30 Tabs - .005/500	Dr. J. Scott
(2)	5/11/99	30 Tabs - .005/500	Dr. J. Scott
(3)	5/17/99	50 Tabs - .0007.5/750	Dr. J. Scott

D. Prior to this time, respondent forged or falsified and obtained 5 generic prescriptions or refills from the Longs Drug Store in San Ramon between September 6, 1998 and September 17, 1998. The prescriptions or refills were ostensibly written by Dr. Fernandina Lo. The strength of each prescription was .005/500 and the quantity of each prescription was 40 for a total of 200 tablets.

E. Additionally, respondent forged or falsified and obtained 13 prescriptions or refills for generic Vicodin from the Safeway Pharmacy in San Ramon between April 16, 1999 and May 24, 1999. Respondent phoned in each of these prescriptions falsely representing that they were authorized by Dr. Fernandina Lo. The strength of each prescription was .005/500 and the quantity of each prescription was 40 for a total of 520 tablets.

F. Respondent also forged or falsified and obtained 34 prescriptions or refills for generic Vicodin from the Rite-Aid Pharmacy in San Ramon between August 23, 1998 and May 22, 1999. Five of these prescriptions or refills were ostensibly written by Dr. Fernandina Lo and the remainder by Dr. Judith Scott. The strength of each prescription was .005/500 and respondent obtained a total of 1190 tablets of generic Vicodin.

13. Respondent is subject to disciplinary action under Code section 2762(b) for having used controlled substances in a manner that is injurious to herself or to the extent that such use impairs her ability to conduct with safety the practice of registered nursing. The allegations contained in paragraph 12 are incorporate by reference as if fully set forth.

14. Respondent is subject to disciplinary action under Code sections 2762(c), 2761(f) and/or 490 for having been convicted of a crime substantially related to the profession of registered nursing and/or a crime which shows respondent possessed controlled substances in violation of the law and/or used controlled substances in a manner injurious to herself or the public. The circumstances are as follows:

1 A. On December 20, 1999, in Alameda County Superior Court Case
2 No. 70414, entitled People vs. Michelle Marie Gardner, aka Michelle Marie Bugg, respondent
3 pled guilty to one count of violating Penal Code section 647(f), disorderly conduct in a public
4 place under the influence of drugs.

5 B. The circumstances regarding the conviction are that on March 21,
6 1999 respondent was working as an in-home care nurse through Home Health Care Plus, a
7 provider of home health care services. On that day respondent was assigned to care for Patient
8 A² at the Patient A's home. Olsten Health Services was a health care provider that contracted
9 with Home Health Care to provide pharmaceuticals to patients of Home Health Care; including
10 Patient A.

11 C. On March 21, 1999 respondent called the pharmacist at Olsten
12 Health Services requesting Dilaudid³ for Patient A. The pharmacist called Patient A's physician
13 for a Dilaudid prescription. Rather than waiting for the prescription to be delivered, respondent
14 drove to Olsten Health Services to pick up the Dilaudid prescription. While the pharmacist was
15 in another room copying the prescription label for the 12 vials of Dilaudid, respondent took two
16 additional vials of Dilaudid from the medical supply without the knowledge of the pharmacist.
17 Rather than delivering the 12 vials of Dilaudid as prescribed or the 14 vials actually taken by
18 respondent, respondent only delivered 6 vials off Dilaudid to Patient A.

19 15. Respondent is subject to disciplinary action under Code section 2762(b)
20 for having used controlled substances in a manner that is injurious to herself, any other person, or
21 to the public or to the extent that such use impairs her ability to conduct with safety the practice
22 of registered nursing. The allegations contained in paragraph 14 are incorporate by reference as
23 if fully set forth.

24 16. Respondent is subject to disciplinary action under Code section 2762(a)

25 _____
26 2. The name of Patient A will be provided to respondent in the course of discovery

27 3. Dilaudid is a Schedule II controlled substance as defined by Health and Safety Code
28 section 11055(b)(1)(K) and a dangerous drug as defined by Business and Professions Code
section 4022.

1 for having obtained or possessed, in violation of the law, or prescribed, furnished or administered
2 to herself controlled substances without a prescription from a physician. The allegations
3 contained in paragraph 14 are re-alleged and incorporated by reference as if fully set forth.

4 PETITION TO REVOKE PROBATION

5 17. On February 11, 1999, in Board Case No. 97-88, the Board ordered
6 Respondent's license revoked, and then it stayed the revocation and placed respondent on a three
7 year probation with terms and conditions.

8 A. Condition 1 of the probation order required Respondent to obey all federal,
9 state and local laws and all rules and regulations governing the practice of registered nursing.
10 Full and detailed accounts of any and violations shall be reported by Respondent to the Board
11 within 72 hours of occurrence.

12 B. Condition 2 of the probation order required Respondent to fully comply
13 with the terms and conditions of the Probation Program and cooperate with the monitoring and
14 investigation of Respondent's compliance with the program.

15 C. Condition 3 of the probation order required Respondent to appear in person
16 at interviews/meetings as directed by the Board or its designated representatives.

17 D. Condition 5 of the probation order required Respondent to submit such
18 written reports, declarations and verifications of actions as required. The declarations shall
19 contain statements relative to Respondent's compliance with probation program.

20 E. Condition 7 of the probation order required Respondent to inform the
21 Board of and obtain Board approval of any agency for which Respondent provides nursing
22 services prior to Respondent commencing work. Respondent shall inform her employer of the
23 reasons for and the terms and conditions of probation and shall provide a copy of the Board's
24 decision to her employer and immediate supervisor. The employer shall submit performance
25 evaluations and other reports requested by the Board. Respondent is also required to notify the
26 Board in writing with 72 hours after termination of any nursing employment.

27 F. Condition 8 of the probation order required Respondent to inform the
28 Board and seek Board approval of the level of supervision provided to respondent while

1 functioning as a registered nurse. The appropriate level of supervision must be approved by the
2 Board prior to commencement of work. Respondent shall practice only under the direct
3 supervision of a registered nurse in good standing with the Board.

4 G. Condition 9 of the probation order required Respondent to work only on
5 regularly assigned, identified and predetermined work sites with appropriate supervision. Any
6 employment must be pre-approved by the Board.

7 H. Condition 10 of the probation order required Respondent to completely
8 abstain from the possession, injection or consumption of all mood altering drugs except when
9 lawfully prescribed by a physician.

10 I. Condition 11 of the probation order required Respondent to participate in a
11 random, biological fluid testing or a drug screening program which the Board approves.

12 18. Grounds exist to revoke Respondent's probation and reimpose the order of
13 revocation for failing to comply with the terms and conditions of the probation as set forth
14 below:

15 A. She has failed to comply with the terms and conditions of the probation
16 program established by the Board by violating probationary conditions 1,2, 3, 5, 7, 8, 9, 10 & 11;

17 B. Respondent violated probationary condition #1 by failing to obey all laws
18 governing the practice of nursing and failing to report such incidents to the Board within 72
19 hours of their occurrence as follows:

20 (i). The allegations contained in paragraphs 12 through 16 above are
21 reincorporated by reference as if fully set forth.

22 (ii). Based upon the allegations contained in paragraph 12 above, criminal
23 charges were brought against respondent in Contra Costa County Superior Court Case No. 01-
24 1100001-5 entitled People vs. Michelle Marie Bugg, aka Michelle Paiva October 12, 1999. The
25 criminal complaint alleged 26 counts of violating Health and Safety Code section 11368,
26 obtaining hydrocodone (Vicodin) with a forged or altered prescription. On November 23, 1999
27 respondent pled no contest to counts 10-15 of the criminal Complaint. However, the proceedings
28 were suspended and respondent was placed in diversion pursuant to Penal Code section 1000, et

1 seq. Respondent failed to report this information to the Board as required.

2 C. Respondent violated probationary condition #2 by violating probationary
3 conditions 1, 3, 5, 7, 8, 9, 10, and 11. Additionally respondent failed to follow the directives of
4 her probation monitor with respect to compliance of the probationary order as more fully set
5 forth below.

6 D. Respondent violated probationary condition 3 in that she failed to appear for
7 probation interviews on the following dates - February 25, 1999, June 21, 1999, February 14 &
8 28, 2000 and March 27, 2000.

9 E. Respondent violated probationary condition 5 in that she failed to submit or
10 cause to be submitted the Board reports and other documents required during the probation
11 period. Specifically, (1) she failed to submit fingerprint cards with the required processing fee in
12 a timely manner, (2) she failed to establish a drug screening facility approved by the Board
13 within 30 days of her probation orientation meeting, (3) failed to provide a prescription billing
14 summary from her pharmacy, (4) failed to provide drug screens when due, and (5) failed to
15 maintain a phone number at which the Board could contact her for a random drug screen.

16 F. Respondent violated probationary condition 7 in that she failed to notify
17 employers or her immediate supervisors of her probation status with the Board and she failed to
18 obtain Board approval before commencing work with these employers. Specifically respondent
19 worked at (1) "a little nursing job in a doctor's office"; (2) a chemotherapy infusion provider;
20 and (3) Home Health Plus, a provider of in-home nursing services without complying with this
21 probationary condition.

22 G. Respondent violated probationary condition 8 by reason of the fact that she
23 never informed her employers of her probationary status or obtained Board approval prior to
24 commencement of work for the locations set forth above in subparagraph 18(F).

25 H. Respondent violated probationary condition 9 by reason of the facts alleged in
26 subparagraphs 18 (F) and (G) above.

27 I. Respondent violated probationary condition 10 by failing to abstain from the
28 use of mood altering drugs as alleged in paragraphs 12 through 16 above.

1 J. Respondent violated probationary condition 11 by failing to fully participate in
2 the Board's random body fluid screening program in that she failed to obtain a random drug
3 screening on April 9, 1999; April 28, 1999 and May 26, 1999 as requested.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

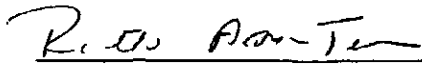
7 I. Revoking or suspending Registered Nurse License Number 456585, issued
8 to MICHELLE PAIVA;

9 2. Revoking probation and reimposing the order of revocation in Board Case
10 Number 97-88 against Registered Nurse License Number 456585, issued to MICHELLE
11 PAIVA;

12 3. Ordering MICHELLE PAIVA to pay the Board of Registered Nursing the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3;

15 4. Taking such other and further action as deemed necessary and proper.

16 DATED: May 10, 2001

17
18
19 
20 RUTH ANN TERRY, M.P.H., R.N.
21 Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California
25 Complainant

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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Accusation)	
Against:)	Case No. 97-88
)	
MICHELLE PAIVA, aka)	OAH No. N 9704172
MICHELLE MARIE GARDNER, aka)	
MICHELLE MARIE GARDNER PAIVA)	
1802 Plumeria Court)	
Pleasanton, CA 94566)	
Registered Nurse License)	
No. 456585,)	
)	
Respondent.)	
)	

DECISION AFTER REMAND FROM SUPERIOR COURT

This matter was heard before Melissa G. Crowell, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 10, 1997, in Oakland, California, and on June 25, 1997, in Emeryville, California.

The Board of Registered Nursing was represented by Richard Arnold, Deputy Attorney General.

Respondent Michelle Paiva appeared and was represented by Lynne G. Stocker, Attorney at Law, Law Offices of Robert J. Glenn, One Daniel Burnham Court, Suite 230C, San Francisco, California 94109.

The record was left open to permit the submission of trial briefs. Complainant's trial brief was received on July 18, 1997, and marked as Exhibit 12 for identification only. Respondent's trial brief was received on August 26, 1997, and marked as Exhibit F for identification. Complainant advised the Administrative Law Judge on September 16, 1997, that he did not intend to file a reply brief scheduled for September 5, 1997. The record was then closed and the matter was submitted.

Respondent's objection to consideration of the documents listed as Exhibit A-D and attached to Complainant's Closing Brief as they are not part of the

evidentiary record is sustained and the exhibits are deemed stricken from complainant's closing brief.

At the hearing, Complainant's motion to strike the allegations concerning patient Sandra B. was granted. The accusation was ordered amended by striking lines 18 through 24 on page 4. The accusation was further ordered amended to reflect the current address of respondent: 1802 Plumeria Court, Pleasanton, California 94566.

The proposed decision of the administrative law judge was submitted to the Board of Registered Nursing on October 14, 1997. After due consideration thereof, the board declined to adopt said proposed decision and thereafter on January 21, 1998 issued an Order of Nonadoption and subsequently issued an Order Fixing Date for Submission of Written Argument. After receiving written argument from respondent alone, the entire record, including the transcript of said hearing, was read and considered and Board of Registered Nursing issued its Decision After Nonadoption.

On October 9, 1998, respondent filed a Petition for Writ of Mandate in Superior Court, Alameda County. On December 24, 1998, Superior Court Judge, Richard A. Hodge issued his "ORDER RE: PETITIONER FOR MANDATE."

The board hereby makes the following decision taking into account the order from Judge Hodge:

FINDINGS OF FACT

I

The accusation was made and filed by Ruth Ann Terry, M.P.H., R.N., in her official capacity as Executive Officer, Board of Registered Nursing (Board), Department of Consumer Affairs.

II

On August 31, 1990, the Board issued registered nurse license number 456585 to respondent Michelle Paiva, also known as Michelle Marie Gardner, and Michelle Marie Gardner Paiva. The license was in full force and effect at all times pertinent to these proceedings, and will expire, unless renewed, on May 31, 1998.

III

Demerol, a brand of meperidine hydrochloride, a derivative of pethidine, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (c)(17).

Morphine, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(M).

Percocet, a brand of oxycodone, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(N).

Vicodin is a compound consisting of 5 mg. hydrocodone bitartrate also known as dihydrocodeineone, a Schedule III controlled substance under Health and Safety Code section 11056, subdivision (e)(4), and 500 mg. of acetaminophen per tablet.

IV

Respondent was employed as a registered nurse at Kaiser Permanente Hospital in Walnut Creek, California, directly from nursing school.¹ Her employment began July 16, 1990, and ended two years later in July of 1992. After passing her licensing examination, respondent was placed on a 90-day probationary period and then became a Staff Nurse I. She held that position from November 1990 to December 1991, when she was promoted to Staff Nurse II.

Respondent worked generally 40 hours a week until her maternity leave commencing March of 1991. Upon her return in May of 1991, respondent increased her hours to 60 to 70 per week, both to accommodate Kaiser's nursing shortage and to earn additional money as she had become the primary breadwinner for her family. Her normal shift was 4:00 p.m. to midnight; when she worked overtime she would work the next shift until 8 a.m.

Respondent was assigned to the medical/surgical floor. The patients on this wing were 80% surgical, requiring post operational care, and 20% medical. For the 4:00 p.m. to midnight shift, there were 3 to 4 nurses on the floor; for the midnight to 8 a.m., the number reduced to 2 to 3.

Respondent's direct supervisor until December of 1991 was Lorraine Schlack, who according to respondent was active on the floor, and proactive with the nurses. Schlack was followed by Nancy Carlton, who in February of 1992 became Assistant Director of Nursing.

V

Carlton undertook a review of charting at Kaiser Walnut Creek, including that of respondent. During the period of January 23, 1992, and May 21, 1992, respondent committed the following acts or omissions with respect to the hospital records of four cited patients:

¹ Respondent was recruited by Kaiser while in nursing school and given a substantial "signing" bonus.

1. Patient Robert M.

a. On January 23, 1992, at 6:50 p.m., respondent signed out two tablets of Vicodin for Robert M. on the Controlled Drug Record. Respondent noted administration of the Vicodin in the Nursing Notes, but did not chart the administration of the Vicodin in the patient's medication record.

The failure to chart the administration of the Vicodin in the patient's medication record rendered Robert M.'s hospital records grossly inconsistent with respect to the administration of this dosage of a controlled substance.

b. On January 23, 1992, at 11:58 p.m., respondent signed out two tablets of Vicodin for Robert M. on the Controlled Drug Record. Respondent failed to chart the administration of the Vicodin in the patient's medication record and in the nursing notes.²

The failure to chart the administration of the Vicodin in the patient's nursing notes and the failure to chart the administration of the Vicodin rendered Robert M.'s hospital records grossly inconsistent with respect to the administration of this dosage of a controlled substance.

2. Patient Peter T.

a. On April 1, 1992, at 6:40 p.m., respondent signed out two tablets of Percocet for Peter T. on the Controlled Drug Record. It was not established that respondent "failed to chart the administration of the Percocet tablets in the patient medication record or the nurses notes, or to otherwise account for the disposition for the Percocet Tablets" as alleged. To the contrary the evidence shows that respondent correctly charted the administration of the controlled substance in the patient's medication record and that the administration of the Percocet was reflected in the nursing notes. The nursing notes were written by a student nurse under respondent's supervision.

b. On April 1, 1992, at 8:00 p.m., respondent signed out 100 mg. of Demerol for Peter T. on the Controlled Drug Record. On the medication record respondent charted the administration of 75 mg. at 7 p.m.

It was not established that respondent "failed to chart the administration of the 75 mg. of Demerol on the Nursing Notes" as alleged. The nursing notes were consistent with the medication record. They reflect that 75 mg. of Demerol was given to Peter T. at 7 p.m.

² Although it was not alleged as a basis for disciplinary action, respondent also failed to chart in the nursing notes the effect of the administration of the controlled substance.

The records do reflect that 100 mg. of Demerol was signed out for the patient, but only 75 mg. were accounted for. If respondent did not utilize all 100 mg. of Demerol, the appropriate charting procedure was to document on the Controlled Drug Record that 25 mg. had been wasted.

The failure to account for the 25 mg. of Demerol rendered Peter T.'s hospital records grossly inconsistent with respect to administration of this dosage of a controlled substance.

c. On April 1, 1992, at 9:30 p.m., respondent signed out two tablets of Percocet for Peter T. on the Controlled Drug Record. Respondent failed to chart the administration of the Percocet tablets in the patient's medication record and in the nurses notes.

The failure to chart the administration of the Percocet in the patient's medication record and in the nurses notes rendered Peter T.'s hospital records grossly inconsistent with respect to the administration of this dosage of a controlled substance.

3. Patient Edmund M.

a. On May 21, 1992, at 9:00 a.m., respondent signed out two tablets of Percocet for Edmund M. on the Controlled Drug Record. It was not established that respondent failed to "chart the administration of the Percocet tablets" as alleged.

It was established by competent evidence that respondent did not correctly chart the administration of the Percocet in the nursing notes. The nursing notes reflect an entry at 12 p.m. to the effect that the patient had been "medicated earlier" with relief after 30 minutes, but in view of the evidence that the patient was also given a dosage of Vicodin at about the same time, one cannot tell which medication is being referred to. Charting in this manner is grossly inaccurate if it was meant to refer to the administration of Vicodin at 9:00 a.m.

Respondent's failure to accurately reflect the time the Percocet was administered in the nursing notes rendered the entries in the hospital records of Edmund M. as to the administration of the controlled substance grossly inconsistent.

b. On May 21, 1992, at 9:20 a.m., respondent signed out two tablets of Percocet for Edmund M. on the Controlled Drug Record. It is alleged in the accusation that respondent charted the administration of the controlled substance on the patient's medication record. The evidence was undisputed that the administration of the controlled substance was not charted on Edmund M.'s medication record.

Following submission of the case for decision, the Board moved to amend the accusation to conform to proof. Respondent objects as the motion is made after the close of evidence so that "respondent [has] no opportunity to be heard." The evidence was undisputed: respondent did not chart the administration of the controlled substance on the patient's medication record. Respondent was given the opportunity to be heard at the hearing, and had the opportunity to respond to the Board's argument in writing. There is no showing that respondent would be prejudiced by the amendment, or that there is a need to reopen the record so that additional evidence on this point may be taken. (See former Gov. Code, § 11516.) For these reasons, the Board's motion to amend the accusation to conform to proof is granted.

Respondent failed to note the administration of the Percocet in the nursing notes. As noted above, a 12 p.m. entry is grossly inaccurate if it is meant to refer to an administration of Vicodin at 9:20 a.m.

Respondent's failure to chart the administration of the Vicodin on the patient's medication record and in the nursing notes rendered the hospital records of Edmund M. with respect to the administration of this controlled substance grossly inconsistent.

c. On May 21, 1992, at 1:00 p.m., respondent signed out two tablets of Percocet for Edmund M. on the Controlled Drug Record. The administration of the Percocet was correctly charted on the patient's medication record. The administration was not correctly charted on the nursing notes. The nursing notes reflect an entry at 4:15 p.m. to the effect of "medication with relief." That entry is grossly inaccurate at to time if it is meant to refer to an administration of Percocet at 1:00 p.m.

Respondent's failure to correctly chart the administration of Percocet in the nursing notes rendered the hospital records of Edmund M. with respect to the administration of this controlled substance grossly inconsistent.

4. Patient Jannine L.

a. On May 21, 1992, at 9:00 a.m., respondent signed out two tablets of Percocet for Jannine L. on the Controlled Drug Record. Respondent did not chart the administration of the two tablets of Percocet on the patient's medication record. The failure to chart the administration of Percocet on the patient's medication record rendered Jannine L.'s hospital records grossly inconsistent with respect to the administration of a controlled substance.

b. It was not established that respondent failed to chart in the nurse's notes the administration of two tablets of Percocet signed out on the Controlled Drug Record for Jannine L. at 12:30 p.m. on May 21, 1992, as alleged.

c. It was not established that respondent failed to legibly chart on the patient's medication record or to chart at all in the nurses notes the administration of two tablets of Percocet signed out on the Controlled Drug Record for Jannine L. at 1:40 p.m. on May 21, 1992, as alleged.

VI

In summary, respondent committed eight acts of grossly inconsistent entries in hospital charts with respect to the administration of controlled substances to hospital patients Robert M. (two acts), Peter T. (two acts), Edmund M. (three acts), and Jannine L. (one act).

VII

Respondent was subject to numerous counseling sessions while at Kaiser Walnut Creek. After an incident in July of 1992 respondent was placed on administrative leave, then given the option to quit or be fired. Respondent chose to quit. Respondent was told she could continue to use Kaiser Walnut Creek as a reference.

VIII

Kaiser Walnut Creek subsequently filed a complaint with the Board regarding respondent's charting acts and omissions. Respondent was not advised by Kaiser that it had filed a complaint with the Board. Respondent was not advised by the Board that a complaint had been filed, and was not informed when the Board commenced its investigation. The Board's investigator did attempt to notify respondent, but those attempts were unsuccessful. Respondent did not learn of the Board's action until she received a copy of the accusation.

IX

Prior to becoming a RN, respondent was a licensed vocational nurse for four years. There is no evidence that respondent was subject to disciplinary proceedings while a licensed vocational nurse.

Respondent has held a number of nursing positions since leaving her employment with Kaiser Walnut Creek. She was employed by Stanford Hospital where she performed direct patient care both in the hospital and in home health care. She was a temporary employee at Kaiser Hayward. She was a Nurse Case Manager for three and one-half years with CRA Managed Care. Presently she is employed by a home care agency. Respondent did not present any evidence regarding her current nursing competence. Nor did she present any performance evaluations from any of her post-Kaiser employers.

There is no evidence that respondent has committed any acts since leaving Kaiser Walnut Creek which could be the basis of disciplinary action.

Respondent and the man with whom she was married at the time of the misconduct are divorced. She provides the sole financial support for her two children, ages 6 and 12. She is presently engaged to a man who is obtaining a teaching credential.

Respondent testified that she has wanted to be a nurse since she was four years old. She has no ambition to do anything else. She would be devastated should she lose her license. Respondent expresses anger regarding the instant disciplinary proceedings, particularly because she was unaware that the Board had been investigating her until she was served with the accusation.³

COST RECOVERY

XI

The Board certifies that the following costs were incurred in connection with the investigation and prosecution of this accusation as of April 30, 1997:

1. Investigative Services from the Division of Investigation:

Fiscal year 1992/1993	
22 hours @ \$ 87.64 per hour	\$1,928.00
Fiscal year 1993/1994	
5.25 hours @ \$ 91.82 per hour	\$ 482.00
Total:	\$2,410.00

2. Deputy Attorney General's Costs:

Fiscal Year 1996/1997	
5 hours @ \$ 98.00 per hour	\$ 490.00

3. Paralegal Costs

Fiscal year 1996/1997	
4.50 hours @ 52.00 per hour	\$ 234.00
Total Costs Incurred:	\$3,134.00

³ The Board's investigator confirmed that she had been unable to make direct contact with respondent during her investigation.

No contrary evidence was introduced.

DETERMINATION OF ISSUES

I

By reason of the matters set forth in Findings V and VI cause for license discipline exists pursuant to Business and Professions Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in section 2762, subdivision (e),⁴ in that on separate occasions while on duty as a registered nurse respondent made eight grossly incorrect entries in hospital or patient records with respect to controlled substances administered to patients Robert M., Peter T., Edmund M., and Jannine L.

II

Although grounds for discipline exist, the question is what measure of discipline is necessary to protect the public interest. Considered are the following:

No patients were actually harmed as a consequence of the charting errors, and the errors were committed with only a handful of respondent's patients at Kaiser. Nevertheless, the potential for harm to respondent's patients was great.

The acts occurred more than five years ago.

Respondent has no prior disciplinary record. There is no evidence to suggest that respondent has committed any additional or subsequent acts which could be the basis for disciplinary action.

Respondent has no criminal record.

Somewhat troubling is respondent's unwillingness to take responsibility for her charting errors. Indeed in her testimony she made absolutely no reference to any of the subject patients or to the manner in which she charted the subject entries.

⁴ Section 2762 of the Business and Professions Code provides in relevant part: "In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code

"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

What she does clearly express is her anger at the Board for bringing these proceedings. Some anger is understandable, particularly because she was unaware that disciplinary proceedings were undergoing. Nevertheless, part of the rehabilitative process is to acknowledge error.

Also troubling is the absence of evidence from recent employers regarding respondent's current nursing competence, or to her job performance.

On balance, and in consideration of all the above cited factors, it would not be contrary to the public interest to permit respondent to continue practice nursing on a restricted basis. However, while no evidence was presented that respondent has a substance abuse problem, all of the medications she mischarted were controlled substances. It is the responsibility of the Board to protect the public, therefore, it is necessary for respondent to be monitored through her physicians and random drug testing.

COSTS

III

Under Business and Professions Code section 125.3 respondent may be ordered to pay the Board its reasonable costs of investigation and enforcement of this matter. Section 125.3 further provides that the Board's certification of the actual costs of the case provides prima facie evidence of the reasonableness of the costs. The costs set forth in Finding XI were established by such a certification. No contrary evidence was presented.

By reason of the matters set forth in Finding XI, the reasonable costs of investigation and enforcement are determined to be \$3,134.

ORDER

Registered Nurse License Number 456585 issued to respondent Michelle Paiva is revoked by reason of Determination I. Revocation is stayed and respondent placed on probation for a period of three (3) years on the following terms and conditions:

1. Respondent shall obey all federal, state and local laws, and all rules, and regulations of the Board of Registered Nursing governing the practice of nursing in California. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fees within 45 days of the effective date of

the decision, unless previously submitted as part of the licensure application process.

2. Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

If a respondent violates any condition of her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline of the respondent's license.

3. Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.
4. Periods of residency or practice outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.
5. Respondent, during the period of probation, shall submit such written reports/declarations and verification of actions under penalty of perjury as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.
6. Respondent, during the period of probation, shall engage in the practice of professional nursing in California for a minimum of 24 hours per week (or as determined by the Board) for 6 consecutive months. Per section 2732 of the Business and Professions Code, no person shall engage in the practice of registered nursing without holding a license which is in an active status.
7. The Board shall be informed of and approve of each agency for which respondent provides nursing services prior to respondent's commencement of work. Respondent shall inform her employer of the reason for and the terms and conditions of probation and shall provide a copy of the Board's decision and order to her employer and immediate supervisor. The employer shall submit performance

evaluations and other reports as requested by the Board. Respondent is also required to notify the Board in writing within seventy-two (72) hours after termination of any nursing employment. Any notification of termination shall contain a full explanation of the circumstances surrounding it.

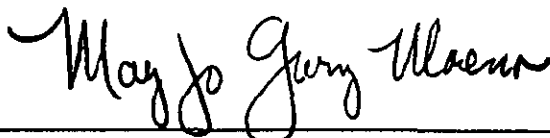
8. The Board shall be informed of and approve of the level of supervision provided to respondent while she is functioning as a registered nurse. The appropriate level of supervision must be approved by the Board prior to commencement of work. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing.
9. Respondent must work only on regularly assigned, identified and predetermined work sites with appropriate supervision. Any employment must be preapproved by the board.
10. Respondent shall completely abstain from the possession, injection or consumption of any route of all psychotropic (mood altering) drugs, except when the same are lawfully prescribed by a licensed physician or dentist as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, and the date the medication will no longer be required.
11. Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of her current telephone number at all times and for ensuring that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent will be considered in violation of probation.

In addition, respondent, at any time during the period of probation shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

Even though respondent did not obtain an order staying the board's Decision After Nonadoption, she has yet to participate in the board's probation program, therefore, the effective date of this decision and the

beginning date for respondent's three year probation period is February 11, 1999.

IT IS SO ORDERED ON February 11, 1999.

A handwritten signature in cursive script, reading "Mary Jo Gorney-Moreno".

MARY JO GORNEY-MORENO, R.N., Ph.D.
President of the Board of Registered Nursing

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Accusation
Against:

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FINDINGS OF FACT

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The accusation was made and filed by Ruth Ann Terry, M.P.H., R.N., in her official capacity as Executive Officer, Board of Registered Nursing (Board), Department of Consumer Affairs.

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Respondent was assigned to the medical/surgical floor. The patients on this wing were 80% surgical, requiring post operational care, and 20% medical. For the 4:00 p.m. to midnight shift, there were 3 to 4 nurses on the floor; for the midnight to 8 a.m., the number reduced to 2 to 3.

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1. Patient Robert M.

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¹ Respondent was recruited by Kaiser while in nursing school and given a substantial "signing" bonus.

The failure to chart the administration of the Vicodin in the patient's medication record rendered Robert M.'s hospital records grossly inconsistent with respect to the administration of this dosage of a controlled substance.

b. On January 23, 1992, at 11:58 p.m., respondent signed out two tablets of Vicodin for Robert M. on the Controlled Drug Record. Respondent failed to chart the administration of the Vicodin in the patient's medication record and in the nursing notes.²

The failure to chart the administration of the Vicodin in the patient's nursing notes and the failure to chart the administration of the Vicodin rendered Robert M.'s hospital records grossly inconsistent with respect to the administration of this dosage of a controlled substance.

2. Patient Peter T.

a. On April 1, 1992, at 6:40 p.m., respondent signed out two tablets of Percocet for Peter T. on the Controlled Drug Record. It was not established that respondent "failed to chart the administration of the Percocet tablets in the patient medication record or the nurses notes, or to otherwise account for the disposition for the Percocet Tablets" as alleged. To the contrary the evidence shows that respondent correctly charted the administration of the controlled substance in the patient's medication record and that the administration of the Percocet was reflected in the nursing notes. The nursing notes were written by a student nurse under respondent's supervision.

b. On April 1, 1992, at 8:00 p.m., respondent signed out 100 mg. of Demerol for Peter T. on the Controlled Drug Record. On the medication record respondent charted the administration of 75 mg. at 7 p.m.

It was not established that respondent "failed to chart the administration of the 75 mg. of Demerol on the Nursing Notes" as alleged. The nursing notes were consistent with the medication record. They reflect that 75 mg. of Demerol was given to Peter T. at 7 p.m.

The records do reflect that 100 mg. of Demerol was signed out for the patient, but only 75 mg. were accounted for. If respondent did not utilize all 100 mg. of Demerol, the appropriate charting procedure was to document on the Controlled Drug Record that 25 mg. had been wasted.

² Although it was not alleged as a basis for disciplinary action, respondent also failed to chart in the nursing notes the effect of the administration of the controlled substance.

The failure to account for the 25 mg. of Demerol rendered Peter T.'s hospital records grossly inconsistent with respect to administration of this dosage of a controlled substance.

c. On April 1, 1992, at 9:30 p.m., respondent signed out two tablets of Percocet for Peter T. on the Controlled Drug Record. Respondent failed to chart the administration of the Percocet tablets in the patient's medication record and in the nurses notes.

The failure to chart the administration of the Percocet in the patient's medication record and in the nurses notes rendered Peter T.'s hospital records grossly inconsistent with respect to the administration of this dosage of a controlled substance.

3. Patient Edmund M.

a. On May 21, 1992, at 9:00 a.m., respondent signed out two tablets of Percocet for Edmund M. on the Controlled Drug Record. It was not established that respondent failed to "chart the administration of the Percocet tablets" as alleged.

It was established by competent evidence that respondent did not correctly chart the administration of the Percocet in the nursing notes. The nursing notes reflect an entry at 12 p.m. to the effect that the patient had been "medicated earlier" with relief after 30 minutes, but in view of the evidence that the patient was also given a dosage of Vicodin at about the same time, one cannot tell which medication is being referred to. Charting in this manner is grossly inaccurate if it was meant to refer to the administration of Vicodin at 9:00 a.m.

Respondent's failure to accurately reflect the time the Percocet was administered in the nursing notes rendered the entries in the hospital records of Edmund M. as to the administration of the controlled substance grossly inconsistent.

b. On May 21, 1992, at 9:20 a.m., respondent signed out two tablets of Percocet for Edmund M. on the Controlled Drug Record. It is alleged in the accusation that respondent charted the administration of the controlled substance on the patient's medication record. The evidence was undisputed that the administration of the controlled substance was not charted on Edmund M.'s medication record.

Following submission of the case for decision, the Board moved to amend the accusation to conform to proof. Respondent objects as the motion is made after the close of evidence so that "respondent [has] no opportunity to be heard." The evidence was undisputed: respondent did not chart the administration of the controlled substance on the patient's medication record. Respondent was given the opportunity to be heard at the hearing, and had the opportunity to respond

to the Board's argument in writing. There is no showing that respondent would be prejudiced by the amendment, or that there is a need to reopen the record so that additional evidence on this point may be taken. (See former Gov. Code, § 11516.) For these reasons, the Board's motion to amend the accusation to conform to proof is granted.

Respondent failed to note the administration of the Percocet in the nursing notes. As noted above, a 12 p.m. entry is grossly inaccurate if it is meant to refer to an administration of Vicodin at 9:20 a.m.

Respondent's failure to chart the administration of the Vicodin on the patient's medication record and in the nursing notes rendered the hospital records of Edmund M. with respect to the administration of this controlled substance grossly inconsistent.

c. On May 21, 1992, at 1:00 p.m., respondent signed out two tablets of Percocet for Edmund M. on the Controlled Drug Record. The administration of the Percocet was correctly charted on the patient's medication record. The administration was not correctly charted on the nursing notes. The nursing notes reflect an entry at 4:15 p.m. to the effect of "medication with relief." That entry is grossly inaccurate at to time if it is meant to refer to an administration of Percocet at 1:00 p.m.

Respondent's failure to correctly chart the administration of Percocet in the nursing notes rendered the hospital records of Edmund M. with respect to the administration of this controlled substance grossly inconsistent.

4. Patient Jannine L.

a. On May 21, 1992, at 9:00 a.m., respondent signed out two tablets of Percocet for Jannine L. on the Controlled Drug Record. Respondent did not chart the administration of the two tablets of Percocet on the patient's medication record. The failure to chart the administration of Percocet on the patient's medication record rendered Jannine L.'s hospital records grossly inconsistent with respect to the administration of a controlled substance.

b. It was not established that respondent failed to chart in the nurse's notes the administration of two tablets of Percocet signed out on the Controlled Drug Record for Jannine L. at 12:30 p.m. on May 21, 1992, as alleged.

c. It was not established that respondent failed to legibly chart on the patient's medication record or to chart at all in the nurses notes the administration of two tablets of Percocet signed out on the Controlled Drug Record for Jannine L. at 1:40 p.m. on May 21, 1992, as alleged.

VI

In summary, respondent committed eight acts of grossly inconsistent entries in hospital charts with respect to the administration of controlled substances to hospital patients Robert M. (two acts), Peter T. (two acts), Edmund M. (three acts), and Jannine L. (one act).

VII

Respondent was subject to numerous counseling sessions while at Kaiser Walnut Creek. After an incident in July of 1992 respondent was placed on administrative leave, then given the option to quit or be fired. Respondent chose to quit. Respondent was told she could continue to use Kaiser Walnut Creek as a reference.

VIII

Kaiser Walnut Creek subsequently filed a complaint with the Board regarding respondent's charting acts and omissions. Respondent was not advised by Kaiser that it had filed a complaint with the Board. Respondent was not advised by the Board that a complaint had been filed, and was not informed when the Board commenced its investigation. The Board's investigator did attempt to notify respondent, but those attempts were unsuccessful. Respondent did not learn of the Board's action until she received a copy of the accusation.

IX

Prior to becoming a RN, respondent was a licensed vocational nurse for four years. There is no evidence that respondent was subject to disciplinary proceedings while a licensed vocational nurse.

Respondent has held a number of nursing positions since leaving her employment with Kaiser Walnut Creek. She was employed by Stanford Hospital where she performed direct patient care both in the hospital and in home health care. She was a temporary employee at Kaiser Hayward. She was a Nurse Case Manager for three and one-half years with CRA Managed Care. Presently she is employed by a home care agency. Respondent did not present any evidence regarding her current nursing competence. Nor did she present any performance evaluations from any of her post-Kaiser employers.

There is no evidence that respondent has committed any acts since leaving Kaiser Walnut Creek which could be the basis of disciplinary action.

X

Respondent and the man with whom she was married at the time of the misconduct are divorced. She provides the sole financial support for her two children, ages 6 and 12. She is presently engaged to a man who is obtaining a teaching credential.

Respondent testified that she has wanted to be a nurse since she was four years old. She has no ambition to do anything else. She would be devastated should she lose her license. Respondent expresses anger regarding the instant disciplinary proceedings, particularly because she was unaware that the Board had been investigating her until she was served with the accusation.³

COST RECOVERY

XI

The Board certifies that the following costs were incurred in connection with the investigation and prosecution of this accusation as of April 30, 1997:

1. Investigative Services from the Division of Investigation:

Fiscal year 1992/1993	
22 hours @ \$ 87.64 per hour	\$1,928.00
Fiscal year 1993/1994	
5.25 hours @ \$ 91.82 per hour	\$ 482.00
Total:	\$2,410.00

2. Deputy Attorney General's Costs:

Fiscal Year 1996/1997	
5 hours @ \$ 98.00 per hour	\$ 490.00

3. Paralegal Costs

Fiscal year 1996/1997	
4.50 hours @ 52.00 per hour	\$ 234.00
Total Costs Incurred:	\$3,134.00

No contrary evidence was introduced.

³ The Board's investigator confirmed that she had been unable to make direct contact with respondent during her investigation.

DETERMINATION OF ISSUES

I

By reason of the matters set forth in Findings V and VI cause for license discipline exists pursuant to Business and Professions Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in section 2762, subdivision (e),⁴ in that on separate occasions while on duty as a registered nurse respondent made eight grossly incorrect entries in hospital or patient records with respect to controlled substances administered to patients Robert M., Peter T., Edmund M., and Jannine L.

II

Although grounds for discipline exist, the question is what measure of discipline is necessary to protect the public interest. Considered are the following:

No patients were actually harmed as a consequence of the charting errors, and the errors were committed with only a handful of respondent's patients at Kaiser. Nevertheless, the potential for harm to respondent's patients was great.

The acts occurred more than five years ago.

Respondent has no prior disciplinary record. There is no evidence to suggest that respondent has committed any additional or subsequent acts which could be the basis for disciplinary action.

Respondent has no criminal record.

Somewhat troubling is respondent's unwillingness to take responsibility for her charting errors. Indeed in her testimony she made absolutely no reference to any of the subject patients or to the manner in which she charted the subject entries. What she does clearly express is her anger at the Board for bringing these

⁴ Section 2762 of the Business and Professions Code provides in relevant part: "In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code

"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

proceedings. Some anger is understandable, particularly because she was unaware that disciplinary proceedings were undergoing. Nevertheless, part of the rehabilitative process is to acknowledge error.

Also troubling is the absence of evidence from recent employers regarding respondent's current nursing competence, or to her job performance.

On balance, and in consideration of all the above cited factors, it would not be contrary to the public interest to permit respondent to continue to practice nursing on a restricted basis. However, while no evidence was presented that respondent has a substance abuse problem, all of the medications she mischarted were controlled substances. It is the responsibility of the Board to protect the public, therefore, it is necessary for respondent to be monitored through her physicians and random drug testing.

COSTS

III

Under Business and Professions Code section 125.3 respondent may be ordered to pay the Board its reasonable costs of investigation and enforcement of this matter. Section 125.3 further provides that the Board's certification of the actual costs of the case provides prima facie evidence of the reasonableness of the costs. The costs set forth in Finding XI were established by such a certification. No contrary evidence was presented.

By reason of the matters set forth in Finding XI, the reasonable costs of investigation and enforcement are determined to be \$3,134.

ORDER

Registered Nurse License Number 456585 issued to respondent Michelle Paiva is revoked by reason of Determination I. Revocation is stayed and respondent placed on probation for a period of three (3) years on the following terms and conditions:

1. Respondent shall obey all federal, state and local laws, and all rules, and regulations of the Board of Registered Nursing governing the practice of nursing in California. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fees within 45 days of the effective date of

the decision, unless previously submitted as part of the licensure application process.

2. Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.
3. Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.
4. Periods of residency or practice outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.
5. Respondent, during the period of probation, shall submit such written reports/declarations and verification of actions under penalty of perjury as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.
6. Respondent, during the period of probation, shall engage in the practice of professional nursing in California for a minimum of 24 hours per week (or as determined by the Board) for 6 consecutive months. Per section 2732 of the Business and Professions Code, no person shall engage in the practice of registered nursing without holding a license which is in an active status.
7. The Board shall be informed of and approve of each agency for which respondent provides nursing services prior to respondent's commencement of work. Respondent shall inform her employer of the reason for and the terms and conditions of probation and shall provide a copy of the Board's decision and order to her employer and immediate supervisor. The employer shall submit performance evaluations and other reports as requested by the Board. Respondent is also required to notify the Board in writing within seventy-two (72) hours after termination of any nursing employment. Any notification of termination shall contain a full explanation of the circumstances surrounding it.

8. The Board shall be informed of and approve of the level of supervision provided to respondent while she is functioning as a registered nurse. The appropriate level of supervision must be approved by the Board prior to commencement of work. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing.

9. ~~Respondent may not work for a nurse registry; temporary nurse agency; home care agency; in house nursing pool; as a nursing supervisor; as a faculty member in an approved school of nursing; or as an instructor in a Board approved continuing education program.~~
Respondent must work only on regularly assigned, identified and predetermined worksite(s) with appropriate supervision ~~as approved by the Board.~~ *Any employment must be pre approved by the Board.*

~~10.~~ Respondent at her expense, shall begin and successfully complete a course(s) in nursing as directed by the Board prior to engaging in the practice of nursing and prior to the end of the probationary term.

~~11.~~ Respondent may be suspended from practicing nursing until the necessary coursework is completed. The content of such course(s) and the place and conditions of instruction shall be specified by Board representatives at the time of the initial probation meeting based on the nature of the violation(s). Specific courses must be approved prior to enrollment. Respondent must submit written proof of enrollment and proof of successful completion. Transcripts or certificates of completion must be mailed directly to the Board by the agency or entity instructing respondent.

~~12.~~ Home study or correspondence courses are not acceptable and will not be approved.

~~13.~~ Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$3,134.

DENIED

Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

14. Respondent shall completely abstain from the possession, injection or consumption of any route of all psychotropic (mood altering) drugs, except when the same are lawfully prescribed by a licensed physician or dentist as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the

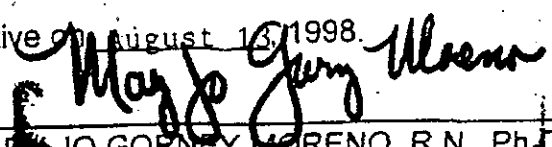
prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, and the date the medication will no longer be required.

15. Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of her current telephone number at all times and for ensuring that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent will be considered in violation of probation.

In addition, respondent, at any time during the period of probation shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

IT IS SO ORDERED ON July 14, 1998.

This order shall become effective on August 13, 1998.


MARY JO GORNEY-MORENO, R.N., Ph.D.
President of the Board of Registered Nursing

1 DANIEL E. LUNGREN, Attorney General
 2 of the State of California
 3 RICHARD ARNOLD, State Bar No. 55418
 4 Deputy Attorney General
 5 50 Fremont Street, Suite 300
 6 San Francisco, California 94105-2239
 7 Telephone: (415) 356-6283

8 Attorneys for Complainant

9 BEFORE THE
 10 BOARD OF REGISTERED NURSING
 11 DEPARTMENT OF CONSUMER AFFAIRS
 12 STATE OF CALIFORNIA

13 In the Matter of the Accusation) NO. 97-88
 14 Against:)

15 MICHELLE PAIVA, aka) ACCUSATION
 16 MICHELLE MARIE GARDNER, aka)
 17 MICHELLE MARIE GARDNER PAIVA,)
 18 7172 Regional Street, #206)
 19 Dublin, CA 94568)
 20 Registered Nurse License)
 21 No. 456585)

22 Respondent.)
 23)
 24)
 25)
 26)
 27)

28 Ruth Ann Terry, M.P.H., R.N., for causes for
 29 discipline, alleges:

30 1. Complainant Ruth Ann Terry, M.P.H., R.N., makes
 31 and files this accusation in her official capacity as Executive
 32 Officer, Board of Registered Nursing, Department of Consumer
 33 Affairs.

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2. On August 31, 1990, the Board of Registered Nursing issued registered nurse license number 456585, issued to Michelle Paiva (respondent herein), also known as Michelle Marie Gardner, also known as Michelle Marie Gardner Paiva. The license will expire on May 31, 1998.

3. Under Business and Professions Code section 2750, the Board of Registered Nursing may discipline any license, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 of the Nursing Practice Act.

Under Business and Professions Code section 125.3, the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

4. DRUGS

"Demerol," a brand of meperidine hydrochloride, a derivative of pethidine, is a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(17).

"Morphine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M).

"Percocet," a brand of oxycodone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(N).

"Vicodin," is a compound consisting of 5 mg. hydrocodone bitartrate also known as dihydrocodeinone, a Schedule

1 III controlled substance as designated by Health and Safety Code
2 section 11056(e) (4), and 500 mg. acetaminophene per tablet.

3
4 5. Respondent has subjected her license to discipline
5 under Business and Professions Code section 2761(a) on the
6 grounds of unprofessional conduct, as defined in section 2762(e)
7 of that code, in that during the period on or about January 23,
8 1992, and May 21, 1992, while on duty as a registered nurse at
9 Kaiser Permanente Hospital, Walnut Creek, California, she
10 falsified, made grossly incorrect, grossly inconsistent or
11 unintelligible entries in the hospital or patient records in the
12 following respects:

13 Patient Robert M.

14 a. On January 23, 1992, at 6:50 p.m., she signed out
15 on the Narcotic Sign Out Sheet, two tablets of Vicodin, a
16 controlled substance, for patient Robert M., noted administration
17 of the Vicodin in the Nurses Notes, but failed to chart the
18 administration of the Vicodin in the patient medication record.

19 b. On January 23, 1992, at 11:58 p.m., she signed out
20 on the Narcotic Sign Out Sheet, two tablets of Vicodin, a
21 controlled substance, for patient Robert M., but failed to chart
22 the administration in the patient medication record or the nurses
23 notes, or to otherwise account for the disposition of the Vicodin
24 tablets.

25 Patient Peter T.

26 a. On April 1, 1992, at 6:40 p.m., she signed out on
27 the Narcotic Sign Out Sheet, two tablets of Percocet, a

1 controlled substance, for patient Peter T., but failed to chart
2 the administration of the Percocet tablets in the patient
3 medication record or the nurses notes, or to otherwise account
4 for the disposition of the Percocet tablets.

5 b. On April 1, 1992, at 8:00 p.m., she signed out on
6 the Narcotic Sign Out Sheet for 100 mg. of Demerol, a controlled
7 substance, for patient Peter T., charted the administration of 75
8 mg. of the Demerol at 7:00 p.m. on the patient medication record,
9 but failed to chart the administration of the 75 mg. of Demerol
10 on the Nurses Notes, or to otherwise account for the disposition
11 of the remaining 25 mg. of Demerol.

12 c. On April 1, 1992, at 9:30 p.m., she signed out on
13 the Narcotic Sign Out Sheet, two tablets of Percocet, a
14 controlled substance, for patient Peter T., but failed to chart
15 the administration of the Percocet tablets in the patient
16 medication record or the nurses notes, or to otherwise account
17 for the disposition of the Percocet tablets.

18 Patient Sandra B.

19 a. On May 15, 1992, at 12:00 noon, she signed out on
20 the Narcotic Sign Out Sheet, 10 mg. of Morphine, a controlled
21 substance, for patient Sandra B., but failed to chart the
22 administration of the Morphine in the patient medication record
23 or the nurses notes, or to otherwise account for the disposition
24 of the Morphine.

25 Patient Edmund M.

26 a. On May 21, 1992, at 9:00 a.m., she signed out on
27 the Narcotic Sign Out Sheet, two tablets of Percocet, a

1 controlled substance, for patient Edmund M., failed to chart the
2 administration of the Percocet tablets on the patient medication
3 record. Respondent did note the nurses notes three hours later
4 as "meds-not specific", but failed to otherwise account for the
5 disposition of the Percocet tablets.

6 b. On May 21, 1992, at 9:20 a.m., she signed out on
7 the Narcotic Sign Out Sheet, two tablets of Vicodin, a controlled
8 substance, for patient Edmund M., charted the administration of
9 the Vicodin tablets on the patient medication record, but failed
10 to chart the administration of the Vicodin tablets on the nurses
11 notes.

12 c. On May 21, 1992, at 1:00 p.m., she signed out on
13 the Narcotic Sign Out Sheet, two tablets of Percocet, a
14 controlled substance, for patient Edmund M., charted the
15 administration of the Percocet tablets on the patient medication
16 record, but failed to chart the administration of the Percocet
17 tablets on the nurses notes.

18 Jannine L.

19 a. On May 21, 1992, at 9:00 a.m., she signed out on
20 the Narcotic Sign Out Sheet, two tablets of Percocet, a
21 controlled substance, for patient Jannine L. The entry on the
22 patient medication record is not legible. Administration of the
23 Percocet tablets is not charted on the nurses notes, and
24 respondent failed to otherwise account for the disposition of the
25 Percocet tablets.

26 b. On May 21, 1992, at 12:40 p.m., she signed out on
27 the Narcotic Sign Out Sheet, two tablets of Percocet, a

1 controlled substance, for patient Jannine L., charted the
2 administration of the Percocet tablets at 12:30 p.m. on the
3 patient medication administration record, but failed to chart the
4 administration of the Percocet tablets on the nurses notes.

5 c. On May 21, 1992, at 1:40 p.m., she signed out on
6 the Narcotic Sign Out Sheet, two tablets of Percocet, a
7 controlled substance, for patient Jannine L. The entry on the
8 patient medication administration record is not legible and no
9 entry was charted on the nurses notes. Respondent failed to
10 otherwise account for the disposition of the Percocet tablets.
11

12 WHEREFORE, complainant prays that a hearing be held and
13 that the Board of Registered Nursing make its order:

14 1. Revoking or suspending registered nurse license
15 number 456585, issued to Michelle Paiva, also known as Michelle
16 Marie Gardner, also known as Michelle Marie Gardner Paiva.

17 2. Ordering Michelle Paiva to pay to the Board of
18 Registered Nursing its costs in investigating and enforcing the
19 case according to proof at the hearing, pursuant to Business and
20 Professions Code section 125.3.

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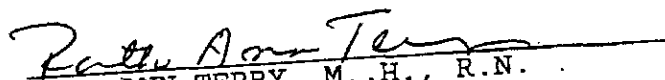
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1 3. Taking such other and further action as may be
2 deemed proper and appropriate.

3 DATED: 3/13/97

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5 
6 RUTH ANN TERRY, M..H., R.N.
7 Executive Officer
8 Board of Registered Nursing
9 Department of Consumer Affairs
10 State of California

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26 Complainant
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